

Goddard

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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-218387.2

DATE: July 26, 1985

MATTER OF:

Harris Construction Company, Inc.--
Request for Reconsideration

DIGEST:

Where a garbled telegraphic modification increasing the bid price in an uncertain amount causes the bid price to be uncertain, the bid was properly found to be nonresponsive, even if, as the bidder now shows, statement in prior decision indicating that the modification also acknowledged two material amendments to the solicitation was erroneous.

Abhe and Svoboda, Inc. (A&S) requests reconsideration of our decision in Harris Construction Co., Inc., B-218387 June 21, 1985, 64 Comp. Gen. ____, 85-1 C.P.D. ¶ ____, in which we sustained Harris Construction Company, Inc.'s (Harris) protest of the Navy's award of a contract to demolish a seaplane hangar, Bldg. A-1, at the United States Naval Air Station Annex, Bermuda, to A&S. The Navy had awarded the contract to A&S as the low bidder and ignored an attempted telegraphic bid modification from A&S which sought to increase A&S's bid by an amount that could not be determined because the message was garbled. We affirm our previous decision.

We held that A&S's bid did not offer a firm fixed-price prior to opening because the garbled message indicated A&S's intent to increase the bid price it originally submitted, but by an uncertain amount. Accordingly, we sustained Harris' protest because a bid not offering a firm fixed-price could not be the basis for an award under a formally advertised procurement.

A&S argues that our decision is based on the incorrect assumption that the garbled telegram which rendered the bid indefinite also acknowledged two material amendments, from which we concluded that the telegram could not be ignored because without it the bid could be nonresponsive. A&S now points out that its original bid documents had acknowledged the amendments in question. Therefore, A&S argues that our decision is based on an erroneous factual premise.

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In the absence of the original bid in the record on which we based our previous decision, we relied on A&S's statement to our Office which read as follows:

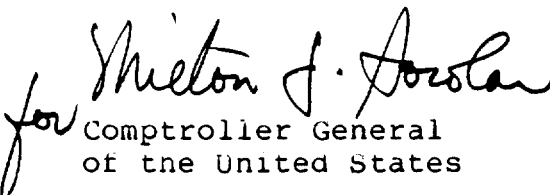
" . . . Prior to the bid opening, Abhe & Svoboda, Inc. acknowledged certain amendments which had been made to the solicitation and attempted also at that time to modify its bid. Abhe and Svoboda, Inc. attempted to accomplish this modification via a western union telegram."

Consequently, we believed A&S only acknowledged these amendments in the garbled telegram and not in its bid.

Although our previous decision erroneously found that the garbled telegram was the only acknowledgment of the amendments, this does not affect our holding that A&S's bid is nonresponsive. A&S specifically indicated prior to bid opening that its price was not firm. Consequently, its bid did not offer the required fixed price and could not be the subject of award. Regardless of whether A&S already had acknowledged the amendments in its bid, its indication that it was revising its bid upwards by an unknown amount in the garbled telegram could not be ignored since A&S's intention to rescind its original bid price and to offer a price that was higher was clear from the telegram.

A&S also cites 42 Comp. Gen. 514 (1963) and asserts that this decision stands for the proposition that a bid remains as originally submitted unless a comprehensible modification is received prior to bid opening or unless a mistake can be clearly established. That case, however, dealt with a bidder's attempt to withdraw a bid after bid opening because the bidder, a supplier of orange juice, did not wish to provide the juice at the bid price since a catastrophic freeze destroyed a large percentage of the citrus crop, thus raising his costs. That case follows the general proposition that after bid opening a bid is valid for the period of acceptance. That is not the situation here.

The decision is affirmed.

for 
Comptroller General
of the United States